IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 287 of 2005
With
CIVIL APPLICATION No. 1236 of 2005
In
FIRST APPEAL No. 287 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHREE MODI OIL IDUSTRIES & 2 - Appellant(s)

Versus

GUJARAT STATE FOREST DEPT. CORPORATION LTD - Defendant(s)

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Appearance :
MR KM PARIKH for Appellants
NANAVATI ASSOCIATES for Respondent
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 14/09/2005

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Admit. Nanavati Associates waives service of process

of admission on behalf of the respondent. With the consent of the parties, the matter is finally heard.

2. The defendant being aggrieved by the judgment and decree dated 31.3.2004 passed in Special Civil Suit No 169 of 1987 by the learned Civil Judge (Senior Division) Vadodara at Vadodara, decreeing the suit to the extent of Rs. 1,28,965.82 ps., with interest at the rate of 12% per annum, is before this Court with the complaint that the suit was illegally decreed, there was no cause of action in favour of the respondent-plaintiff and assuming the court was justified in decreeing the suit, interest at the rate of 12% per annum could not be awarded.

3. The facts for disposal of the present appeal are that the plaintiff-respondent-Corporation invited bids for sale of Mahuda Doli vide their publication dated 28.5.84, the appellants-defendants submitted their price bid of Rs. 622/- per quintal and deposited a sum of Rs. 50,000/- towards earnest money. After the contract was concluded between the parties, the defendant was required to deposit further sum of Rs. 40,000/- and lift the goods in accordance with the directions of the plaintiff-Corporation. The defendants did deposit further sum of

Rs.40,000/-, but did not lift the goods in accordance with the directions of the Corporation after making proper payments. Being aggrieved by the conduct of the defendants, the plaintiff-Corporation issued various notices, but as the plaintiff could not get any response or any money deposit from the defendants, they auctioned the goods afresh and sold the whole lot at the rate of Rs. 450/- per quintal to M/s. Hindustan Lever Limited. After suffering the loss of Rs. 172/- per quintal, godown charges etc., they filed he suit for recovery of the amount. The suit amount of Rs. 2,77,184/- includes the amount of Rs. 81,382/- which is the difference in the price quoted by the defendants and the price actually received by the plaintiff, Rs. 1,03,886.42 ps., towards the interest, Rs. 28,020/- towards the godown rent, Rs. 4,427.47 ps., towards the interst for delay in payment of the earnest money and Rs. 1250/- towards stationary, publication and sundry expenses, totalling to Rs. 2,18,965.82 ps., and it also includes a sum of Rs.58,219.05 ps., as interest at the rate of 20% up to 28.2.87. In response to the pleadings raised by plaintiff, the defendants raised various pleadings, parties were allowed to lead evidence and were given proper opportunity of hearing. After hearing the parties,

the learned trial court held that the plaintiff would not be entitled to the interest of Rs. 50,219.05 ps., but the defendants shall be answerable to pay Rs.2,18,965.82 ps., out of which the sum of Rs. 90,000/- deposited by the defendants with the plaintiff will have to be adjusted. It accordingly directed that the defendants would be answerable to pay a sum of Rs. 1,28,965.82 and would also pay the interest at the rate of 12% from the date of the suit till realization of the amount. Costs were also awarded in favour of the plaintiff.

4. Learned counsel for the appellants submits that the court below was unjustified in decreeing the suit, specially when the plaintiff could not prove the actual damages and the court below was also unjustified in awarding interest over the amount of Rs. 81,382/-. It was also submitted that the godown charges could not be awarded, specially when the plaintiff has not proved the act of vigilance in reducing the losses in disposing of the goods at the earliest. It was also submitted that from the facts, it would clearly appear that the amount of decree is inclusive of the interest, therefore, the court below was not justified in awarding the interest over interest.

5. Learned counsel for the plaintiff-respondent, on the other hand, submitted that present is a case where because of the lapses on the part of the defendants, the goods could not be sold right in time and were ultimately sold at the loss of Rs. 172/- per quintal and total quantity was 487 quintals. It was also submitted that if the goods were lifted right in time, then, the money deposited by the defendants could be used and utilized by the plaintiff which is a public corporation. In relation to pendente lite and future interest, it is submitted that present being a commercial contract, the court below was justified in awarding 12% interest. On the merits, though we are in general agreement with the findings recorded by the trial court, but we must observe that the suit amount of Rs.2,77,184.87 ps., was inclusive of the interest, the interest was to the extent of Rs. 1,03,886.42 ps., the losses were to the extent of Rs. 81,382/-.

6. From the evidence available on the records, it would clearly appear that the defendants entered into an agreement to purchase the property/property in the goods on certain terms, but did not honour their own words and

refused to lift the goods. From the evidence it also appears that the plaintiff who were to get Rs. 622/- per quintal as price of Mahuda Doli were forced to sell the said Mahuda Doli at the rate of Rs. 450/- per quintal, the losses suffered by the plaintiff to the tune of Rs. 81,382/- are proved.

7. In our considered opinion, when the defendants did not lift the goods right in time and the plaintiff were required to keep the goods in the safe custody, then, they were certainly entitled to the godown charges. In our considered opinion, the court below on the evidence was not unjustified in observing that because of the lapses on the part of the defendants, the plaintiff had suffered losses. So far as the question of interest is concerned, under Section 34 of the Code of Civil Procedure, in case of a commercial transaction, the court can award interest beyond the rate of 6%, but not above the contractual rate or the rate as agreed between the parties. In the present case, after considering the totality of the circumstances and the fact that the losses suffered by the plaintiff were to the tune of Rs. 81,382/- and the godown charges were Rs. 28,020/- totalling to Rs. 1,09,402/-, only against which a sum of

Rs. 90,000/- has already been adjusted towards interest. We are of the opinion that the award of the interest at the rate of 12% on the decretal amount would be at the very higher side. Taking into consideration the totality of the circumstances, we are of the opinion that the plaintiff would be entitled to interest at the rate of 8% from the date of the suit on the principal amount of Rs. 81,382/- and the godown charges of Rs.28,020/-. Interest shall be payable by the defendants from the date of the suit till the date of realization. We hereby further direct that if the total decretal amount with interest as modified by us is paid by the defendants within a period of four months from today, then, that would be the end of the matter, but in case, the total amount as decreed by us is not paid by the defendant within a period of four months, then, the defendants would be liable to pay interest at the rate of 12% from the date of this decree. The appeal to the extent indicated above is allowed. The decree be drawn accordingly. Consequently Civil Application is disposed of.

[R.S. GARG, J.]

[K.M. MEHTA, J.]

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